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MEMORANDUM ENDORSEMENT

Abrams v. UY Trading Ltd., et al.,
20 Civ. 5174 (LLS)

DATE FILED 9/7/23

Plaintiff Marcus Abrams brought this action against defendants UY Trading Ltd. (#10020400), UY Trading Ltd (#10086420), SEP Consulting Ltd., Sandra Piedrabuena, Russell Abrams, Titan Capital Group LLC, Titan Capital Group III, LP, and Titan Capital Group III, LP Employee Incentive Plan (together "defendants") alleging violations of the Employee Retirement Income Security Act ("ERISA") and twenty-four related claims under state and common law based on defendants failure to pay Marcus Abrams dividends from his deferred compensation investment plan ("the Plan"). On June 6, 2023 Marcus Abrams received the clerk's certificate of default. He now moves for default judgment on all claims against all defendants and seeks damages and attorneys' fees.

The facts alleged in the Complaint, accepted as true after defendants' default, adequately state a claim for improper denial of benefits and breach of fiduciary duties under ERISA. As such, default judgment is granted against defendants on those claims. E.g., Alston as Tr. of Loc. 272 Lab. Mgmt. Pension Fund v. Nagle Parking Inc., 2023 WL 4157186, at *2 (S.D.N.Y. June 23, 2023).

However, the remaining claims under state and common law are preempted by ERISA because Marcus Abrams could have (and in fact did) bring those claims under ERISA and they are "inextricably intertwined with" with his ERISA claims. E.g., Arditi v. Lighthouse Intern, 676 F.3d 294, 299 (2d Cir. 2012) (quoting Aetna Health v. Davila, 542 U.S. 200, 207 (2004)). As those claims are "nothing more than an alternative theory of recovery for conduct actionable under ERISA,"¹ they are dismissed. E.g., LoPresti v. Terwilliger, 126 F.3d 34, 41 (2d Cir. 1997); Chau v. Hartford Life Ins. Co., 167 F. Supp. 3d 564, 571 (S.D.N.Y. 2016).

Marcus Abrams is entitled to damages. He has submitted the necessary documentation to support his request for damages, including an expert report opining on his damages. However, that

¹ The Complaint itself refers to several of the state and common law claims as an "alternative." See generally Complaint (Dkt. No. 5).

report presents two different "scenarios" (and therefore two different amounts) for damages: the first based on the actions of a "prudent portfolio investor," who would have invested in "a standard mix of U.S. stocks and bonds," and the second based on the "returns of large company stocks." The court adopts the amount of damages calculated under the first scenario because the Plan, under which Abrams seeks damages, was designed to be a "traditional" and "diversified investment." Marcus Abrams Declaration (Dkt. No. 45). Therefore, Marcus Abrams is entitled to damages of \$16,544,709.00 and prejudgment interest of \$9.954,022.18 for a total of \$26,498,731.18.

His counsel, James Serritella, an example of patience and unfailing attendance to his professional duties under the most trying and thankless circumstances, is fully entitled to a long-overdue fee. He claims his attorneys' fees billed to date, which appear reasonable, and offers to provide support for that amount. Because, "the prevailing party's fee application must be supported by contemporaneous time records, affidavits, and other materials," McDonald ex rel Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund, 450 F.3d 91, 96 (2d Cir. 2006), the Court requests that he submit further documentation supporting his request within fourteen days of this order.

The Clerk of the Court is respectfully directed to close this case.

So ordered.

Dated: New York, New York
September 7, 2023



LOUIS L. STANTON
U.S.D.J.

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marcus Abrams,

Plaintiff,

v.

UY Trading Ltd. (#10020400), UY Trading Ltd.
(#10086420), SEP Consulting Ltd., Sandra
Piedrabuena, Russell Abrams, Titan Capital Group
LLC, Titan Capital Group III, LP, and Titan Capital
Group III, LP Employee Incentive Plan,

Defendants.

Case No. 20-cv-5174 (LLS)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the accompanying Declaration of James R. Serritella and the exhibits attached thereto, and the Memorandum of Law submitted therewith, and all prior pleadings and filings, Plaintiff Marcus Abrams will move this Court, before the Honorable Louis L. Stanton, United States District Judge, in Courtroom 21C of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, on such date as the Court determines, for the entry of a default judgment in this case against all Defendants.

Dated: New York, New York
June 23, 2023

KIM & SERRITELLA LLP

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